

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

Plaintiff,

-v-

ANTHEM, INC.,

Defendant.

USDC SDNY
DOCUMENT
ELECTRONICALLY FILED
DOC #: _____
DATE FILED: 10/04/2023

20 Civ. 2593 (ALC) (KHP)

ORDER

WHEREAS, Plaintiff the United States of America (the “United States” or “Government”) has brought this civil fraud action against defendant Anthem, Inc. (“Anthem”), pursuant to the False Claims Act, 31 U.S.C. § 3729 *et seq.*;

WHEREAS, this case is presently in discovery;

WHEREAS, Anthem has requested that the United States produce to Anthem: (i) all documents that the United States produced in response to any discovery requests served on the Government in a separate litigation, *United States of America ex rel. Benjamin Poehling v. UnitedHealth Group, Inc., et al.*, 16 Civ. 08697 (C.D. Cal.) (the “*Poehling* Litigation”) (the “*Poehling* Document Requests”); and (ii) transcripts of deposition testimony provided by Government witnesses in the *Poehling* Litigation;

WHEREAS, in the *Poehling* Litigation, the district court required the Government to produce Government documents (principally consisting of Centers for Medicare and Medicaid Services documents) that had been withheld by the Government on the ground of deliberative process privilege;

WHEREAS, in this case, the Government's position is that, through the *Poehling* Document Requests, Anthem seeks internal Government deliberations that are not relevant or proportional to the needs of the case, and the Government has reserved the right to assert the deliberative process privilege as appropriate;

WHEREAS, the Government previously agreed to produce transcripts of deposition testimony provided by Government witnesses in the *Poehling* Litigation, as well as the exhibits from such depositions that were documents produced by the Government to the defendant in that case (together, the "Transcripts" and Exhibits"), but only after reviewing the Transcripts and Exhibits for information protected by the deliberative process privilege and withholding identified privileged information, as appropriate; and

WHEREAS, the Court has determined that discovery in this case will be facilitated by the Government's production of the Transcripts and the Exhibits,

ACCORDINGLY, IT IS ORDERED THAT:

1. The Government shall produce unredacted copies of the Transcripts and Exhibits to Anthem, and such productions shall not be considered voluntary and shall not constitute a waiver of the deliberative process privilege.
2. To the extent the Government determines that any information in the Transcripts or Exhibits is particularly sensitive or its production would cause particular harm, it shall produce minimally-redacted versions of those documents without delay. The Government shall simultaneously a) email unredacted versions to the Court on an *ex parte* basis with the redacted portion(s) highlighted, and b) file a letter on ECF noting the production of the redacted document for *in camera* review and explaining why the material should remain redacted. Defendant shall have one week following service of the Government's letter to object to the redactions.

3. The Government may apply appropriate designations to any of the Transcripts or Exhibits pursuant to the operative protective order in this case, including by designating all Transcripts and Exhibits as “attorneys’ eyes only” in order to permit the Government to produce such documents immediately without first conducting a confidentiality-designation review.
4. Nothing in the Order shall be construed to require the production of any documents or information other than the Transcripts and Exhibits themselves. For the avoidance of doubt, this Order does not require production of documents pertaining to the subject matter of the Transcripts or Exhibits or documents containing substantively similar information as the Transcripts or Exhibits.
5. Nothing in the Order shall be construed to alter the relevant scope and limits of discovery permitted under F.R.C.P. 26(b)(1).

SO ORDERED:

Dated: New York, New York
October 04, 2023



HON. KATHARINE H. PARKER
United States Magistrate Judge